Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

No. _____

VIRDELL R. MAYES, Petitioner

v.

MILDRED R. SANFORD, Respondent

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

PETITION FOR WRIT

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August 3, 1994

10 pp

QUESTIONS PRESENTED

1. Whether Petitioner And The Adult Ward Were Denied Due Process Of Law When The Court Arbitrarily Disregarded The Best Interest Of The Adult Ward By Refusing To Consolidate The Conservatorship In Petitioner As Recommended By The Guardian Ad Litem?

2. Whether Petitioner And The Adult Ward Were Denied Due Process of Law When The Auditor-Master's Findings And Report Were Based On Unsworn And Unreliable Testimony And When The Probate Court Arbitrarily Adopted The Clearly Erroneous Findings Of The Auditor-Master?

3. Whether Due Process Requires, Under The Circumstances Of This Case, The District Of Columbia Probate Court To Relinquish Its Jurisdiction Over The

Conservatorship Of The Adult Ward To The Commonwealth Of Virginia?

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PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

The petitioner Virdell R. Mayes respectfully prays that a writ of certiorari issue to review the judgment and opinion of the District of Columbia Court of Appeals entered in this proceeding on May 5, 1994.

OPINION BELOW

The opinion of the District of Columbia Court of Appeals, not yet

reported, appears in the Appendix hereto.

JURISDICTION

The judgment of the District of Columbia Court of Appeals was entered on May 5, 1994 and this petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment provides in pertinent parts that "no person shall . . . be deprived of life, liberty, or property, without due process of law . . . ."

STATEMENT OF THE CASE

Irene R. Davis, the Adult Ward, is 87 years old and a victim of Alzheimer's disease which is characterized by progressive dementia. This crippling disease has left the Adult Ward in a

position where she is unable to care for herself. The Adult Ward must rely on others to attend to her most basic needs (i.e., feeding, bathing, etc.). Mrs. Davis has lived in the home of her sister, Petitioner Virdell R. Mayes, since 1990, and has been receiving care from Mrs. Mayes and her husband. Petitioner lives in Ettrick, Virginia.

Under the pretext of caring for the Adult Ward in Respondent's home in Washington, D.C., the Conservator of the Estate, Mildred R. Sanford, removed the Adult Ward from the home of Petitioner in Virginia. It was discovered later that Respondent had placed the Adult Ward in a nursing home without informing the Petitioner. Thus, in December, 1989, Petitioner filed a Petition for Appointment as Conservator of the Adult

Ward and requested the removal of the Conservator, Mildred R. Sanford.

After the appointment of a Guardian Ad Litem and further hearing, it was determined by Probate Judge Wagner that there would be a partial removal of Mildred R. Sanford as Conservator of the Person pending an audit of the accounts and that Petitioner would be appointed Conservator of the Person of the Adult Ward. In addition, it was ordered that the Adult Ward reside with Petitioner in her home in Ettrick, Virginia. The Court found that the best interest of the Ward would be served by being cared for by a family member in a loving, family environment as provided by Petitioner and her husband. The Judge stated:

> The petitioner and her husband have had an opportunity to have the ward in

their home and are anxious to assume her care in their home. The ward . . . reacts to things she enjoys and to things that she dislikes in terms of food and seemed to express some feeling of caring toward her sister when she was in her home. There's been some evidence, and I don't think--I think that our common sense will t e l l us, as well, that there at least have been some evidence that it is better for such patients to be cared for in their--in the home, if they can be, consistent w i t h t h e i r conditions, by a loving family rather than in a--any other type of setting which is more institutional in nature. And for this reason, the Mayes' request and willingness to attend to and to maintain the ward in their home and provide her with love and care of family is -- appears to be something that

> would be in her best interest and she should have that opportunity to live with family as long as it is possible.

The Guardian Ad Litem appointed during the initial petition, which resulted in the removal of Mildred Sanford as Conservator of the Person, recognized the deficiencies of Mildred Sanford's handling of the ward's assets and a need for someone to "marshall the Ward's financial resources." The Guardian Ad Litem stated:

> The Guardian Ad Litem believes that, although Mrs. Sanford can do an adequate job with the finances, Mrs. Sanford lacks the day to day contact with the Ward to make the necessary decisions regarding expenditures. In that regard, Mrs. Mayes is in a superior position to

> make financial decisions and handle the Estate. The Guardian Ad Litem believes that the separation of the Conservatorship is impractical, given the unfounded level of mistrust between the two conservators. For that reason the Guardian Ad Litem believes to be in the best interest of the Ward to place the office of the Conservatorship of the Estate with Mrs. Mayes.

The Guardian Ad Litem also stated in her report:

> The Ward is an elderly lady suffering of a condition commonly known as Alzheimer's Disease which prevents her from taking care of her own basic needs. The Ward requires constant attention and care. Mrs. Mayes is able to provide adequate care to the Ward as well as a

> loving environment. For that reason, the Guardian Ad Litem believes that Mrs. Mayes should remain as Conservator of the Ward.

It was during a hearing before Judge Sullivan on April 11, 1991, that the Conservator of the Person was able to demonstrate to the Court that counsel for the Conservator of the Estate made misrepresentations concerning the approval of the accounts. Concerned about the possibility of mismanagement by Respondent, the Court appointed the Auditor-Master to review the handling of the Ward's estate.

Thereafter, a second Guardian Ad Litem in a report to the Court concluded that it would "be in the best interest of the Ward to place the Office of the Conservatorship of the Estate with Mrs.

Mayes." In a hearing held on September 29, 1992, before Judge Hamilton, the Guardian Ad Litem testified in support of her report and stated to the Court that:

> For the time being, I think the Mayes' are doing a terrific job. They can continue to take care of Mrs. Davis.

Further, the Guardian Ad Litem stated to the court:

> Mrs. Sanford does not have the day-to-day contact with Mrs. Davis to determine whether a particular bill is appropriate or not. And because some of these bills are discretionary in my view, I think that perhaps the Ward would be better served if we could allow the Mayes to handle the estate or handle the finances.

On the issue of removal, Judge Hamilton had two (2) reports to consider--

the first being the Auditor-Master's report and the second being the report of the Guardian Ad Litem. The Auditor-Master and the Guardian Ad Litem, while disagreeing on the ultimate result of the conservatorship, did agree that the present divided system of administering the ward's affairs is not in the best interest of the ward.

While the Auditor-Master did not visit the Ward nor the environment in which the Ward was maintained, the Auditor-Master concluded that "it is not in the best interest of the Ward to continue the existing system of supervision of her affairs." "The Conservators' personal animus towards each other has resulted in an unworkable situation, and a diversion of the resources of both the Ward and this

Court." Thus, based solely on a review of the supervision of the Ward's affairs under the divided conservatorship, the Auditor-Master recommended that "both Conservators be removed by the Court, and that an independent third party, or any party agreeable to both Conservators, be appointed Conservator of the Person and the Estate of the Ward." Subsequently, both Conservators filed objections to the Auditor-Master's report.

Unlike the Auditor-Master, the Guardian Ad Litem visited with the Ward and observed her living environment with Petitioner. As a result of the total picture, the Guardian Ad Litem found that it was in the best interest of the Ward to appoint Petitioner as the Conservator of the Estate. While she similarly concluded that "[t]he conflict between the two

Conservators is, no doubt, irreconcilable," she believed Petitioner was in a better position to manage the estate of the Ward. Additionally, the Guardian Ad Litem noted that "the separation of the Conservatorship is impractical, given the unfounded level of mistrust between the two Conservators."

Nonetheless, Judge Hamilton refused to follow any recommendation with regard to the Conservatorship. His solution was to make no change. At the hearing, the following exchange took place:

> Mr. Newsome: Well, Your Honor, what are your plans with regard to the guardian ad litem report which recommends a change?
>
> The Court: Well, there's no change, as I indicated, will be taken. I mean both the guardian and Auditor made that

> recommendation. But I'm not--I'm not going to take that at this time. . . .

Subsequently, Judge Hamilton erroneously adopted the Auditor-Master's report. See Order dated October 26, 1992, which states:

> ORDERED, that the Findings of the Auditor Master, as set forth on pages one through twenty-six of her Report are hereby adopted as findings of this Court. . . .

Court Order dated October 26, 1992.

In the same Order dated October 26, 1992, the Court:

> ORDERED, that the Findings of the Auditor-Master, as contained in her report of March 31, 1992, are hereby ratified and approved. . . .

Id.

Judge Hamilton's adoption of the clearly erroneous and unconstitutional Auditor-Master's report ignored the best interest of the Ward. In light of his erroneous and arbitrary decision, this Court should review the Order below and direct the court to remove Respondent as Conservator of the Estate and consolidate the Conservatorship of the Adult Ward with Petitioner in compliance with the Guardian Ad Litem's assessment of the ward's best interest.

REASONS FOR GRANTING THE WRIT

I. Petitioner And The Adult Ward Were Denied Due Process When The Court Arbitrarily Disregarded The Report And Recommendation Of The Guardian Ad Litem To Consolidate The Conservatorship With Petitioner

D.C. Code 21-2057 requires the D.C. court, in appointing a person as conservator, to act in the best interest

of the protected person and to "select the person it deems best qualified to serve."

D.C. Code 21-2061 provides that "[t]he court may remove a conservator for good cause . . . [and] [u]pon the conservator['s] . . . removal, the court may appoint another conservator." D.C. Code 21-2062 provides that an interested person "may petition the court for an order removing the conservator and appointing a temporary or successor conservator."

The law in the District of Columbia is clear. The Court must act in the best interest of an Adult Ward and it must select the person it deems best qualified to serve as the conservator of the Adult Ward. D.C. Code 21-2057. When good cause has been shown, the court cannot ignore the best interest of an Adult Ward and

refuse to select the best qualified conservator to act in the Adult Ward's best interest. It is the office of the Guardian Ad Litem to prosecute or defend the best interest of the ward. D.C. Code 21-2033.

Here, the Guardian Ad Litem appointed by the Court to assist in determining the best interest of the Adult Ward, has recommended that it was in the Ward's best interest to appoint Petitioner as Conservator of both the Estate and Person of the Adult Ward. Furthermore, the Guardian Ad Litem's report and testimony before the Court were consistent with the powers granted her when she was appointed and as is set forth in the law. D.C. Code, 21-2011(9) provides that a "Guardian Ad Litem" means an individual appointed by the court to assist the subject of an

intervention proceeding to determine his or her interests in regard to the guardianship or protective proceeding or to make that determination if the subject of the intervention proceeding is unconscious or otherwise wholly incapable of determining his or her interest in the proceeding even with assistance. Id.

By failing to act upon the recommendation of the Guardian Ad Litem, to consolidate the Conservatorship in Petitioner, the Court ignored the very reason for the Guardian Ad Litem being appointed and violated Petitioner and the Adult Ward's rights to due process. In its Order dated July 29, 1992, the Court identified the "conflict" that existed between the Conservator of the Person and the Conservator of the Estate as its basis

for appointing someone to represent the interests of the Adult Ward. App. 25a.

Although the report and strong recommendation of the Guardian Ad Litem demonstrated good cause for the removal of Respondent as Conservator of the Estate and for the consolidation of the conservatorship of the Adult Ward in Petitioner, the Court arbitrarily ignored it and dismissed the Guardian Ad Litem.

The court abused its discretion and denied Petitioner and the Adult Ward due process of law when it discharged the Guardian Ad Litem without making findings concerning the best interest of the Adult Ward or acting on the Guardian Ad Litem's recommendation to consolidate the Conservatorship in Petitioner. There is no determination by the Court of what was in the best interest of the Adult Ward in

the light of the Guardian Ad Litem's recommendation. A determination of the Adult Ward's best interest in these circumstances was required by D.C. Code, § 21-2001, et seq. The report of the Guardian Ad Litem was clear and convincing evidence that the enlargement of the powers of the Conservator of the Person (Petitioner) was warranted and that Respondent should have been removed as Conservator of the Estate. See, D.C. Code 21-2003. The court acted arbitrarily because there is a complete want of findings or a record to explain the Court's failure to determine the best interests of the Adult Ward. In Tauber v. District of Columbia, 511 A.2d 23, 28 (D.C. 1986), the District of Columbia Court of Appeals held that where it lacks findings or a record that otherwise

explains the discretionary order on appeal, "we are unable to apply the law intelligently to the facts of th[e] case" and must remand to fill the gap. Tauber, 511 A.2d at 28. This was the situation in this case. However, the D.C. Court of Appeals stated that "Even though the trial judge failed to make specific findings.... We reject appellant's request to remand the case for more specific findings." (App. at 4a, fn. 2). This point is significant not only because the Auditor-Master's findings were arbitrary but the findings were clearly erroneous.

II. The Auditor-Master's Findings Are Based On Unsworn And Un-Reliable Evidence; Are Arbitrary And Clearly Erroneous And Have Denied Petitioner And The Adult Ward Due Process

There were three Orders of Reference to the Auditor-Master from the Probate

Court. By Order dated June 18, 1991, the Court stated:

> This matter came on for a status hearing regarding nine outstanding matters herein listed in Order Scheduling Hearing entered March 3, 1991, including Reports of the Register of Wills on the Conservator's First through Fifth Accounts, Oppositions and Responses thereto; Request for Fee Compensation and Reimbursement for Expenses, Objection and Response thereto; and Petition to Remove Conservator and Opposition thereto.
>
> UPON Consideration of issues raised in said pleading, as well as argument of counsel, it is hereby,
>
> ORDERED, that this matter be referred to the Auditor-Master to review all submitted accounts and objections and to

provide a report for the Court regarding same.

By Court Order dated November 21, 1991, the Court stated:

> THIS MATTER came on for a hearing regarding a petition to expend funds, held on June 28, 1991, and an Order ratifying and authorizing expenditures was entered on that date. The Court recognizes that there remain a number of outstanding matters as listed in Order Scheduling Hearing entered March 3, 1991, as well as claims for reimbursement.
>
> UPON CONSIDERATION of issues raised in said pleadings, argument of counsel and the Court's instructions in open Court regarding disposition thereof, it is hereby
>
> ORDERED, that all pending litigated matters including those related to

> claims for reimbursement made by the Conservator of the Person; Request for Fee Compensation and Reimbursement for Expenses, Objections and Response thereto; and Petition to Remove Conservator and Opposition thereto, be referred to the Auditor-Master to review, and to forthwith provide a report for the Court regarding same.

By Court Order dated December 19, 1991, the Court stated:

> Upon consideration of the Motion for Referral to the Auditor-Master of Sara M. Robinson, Attorney for the Conservator of the Estate herein, filed on the 11th day of December, 1991, and upon review of the record herein, and for good cause shown, it is by the Court this 19th day of December, 1991,

> ORDERED, that the Petition for Fee Compensation filed herein on the 26th day of November, 1991, is hereby referred to the Auditor-Master nunc pro tunc to December 17, 1991.

Auditor-Master, p. 2.

The Auditor-Master construed the three Orders of Reference to cover essentially three areas and basically limited her findings and recommendations to the following three areas:

> •Requests for Fee Compensation and Objections Thereto;

Auditor-Master, p. 14.

> •Objections to Accounting Reports regarding valuation of personal property and reparation or restitution with regard to same; and

Id. at 16.

- Petition to Remove Conservator and Responses thereto.

Id. at 19.

Petitioner demonstrated by clear and convincing evidence that each of the above findings of the Auditor-Master were not only arbitrary but clearly erroneous, puzzling and unreliable. The court's reliance on the arbitrary findings by the Auditor's Master was a denial of due process to Petitioner and the Adult Ward.

The Auditor-Master found on page 14 of her report that after the Conservator of the Person objected to the Petition of Attorney for Conservator of the Estate for Compensation, the Court entered an Order granting Conservator of the Estate's motion to refer the matter to the Auditor-Master, nunc pro tunc to December 17, 1992. Auditor-Master, p. 14. Thereafter,

the Auditor-Master strangely ignored that it was as a direct result of objections filed by the Conservator of the Person that a determination was made that "certain services rendered" by the attorney for the Conservator of the Estate" were included in the first request for Compensation dated October 26, 1990 and "were repeated in the second request for fee compensation." Id. Rather than addressing the underlying misconduct suggested by this revelation, the Auditor-Master simply permitted the attorney for the Conservator of the Estate to delete the duplicated fee request. Then, the Auditor-Master proceeded to ignore the more serious objection raised by the Petitioner that the legal fees requested by the Respondent should not be charged to the assets of the Adult Ward because they

represent payment for the Respondent's mismanagement and failure to comply with rules and orders of the Probate Court. Then, surprisingly, the Auditor-Master recommended that the attorney's fee awarded in the amount of $13,080.00 and costs of $403.87 be paid to the attorney for Conservator of the Estate from the Ward's assets.

This recommendation is not only clearly erroneous but unconscionable and highly suspect in the light of the obvious mismanagement of the Ward's Estate by the Respondent, which was found, ignored and rewarded by the Auditor-Master. For example, the Auditor-Master found that:

> (5) The Conservator filed a handwritten First Account herein on January 22, 1986 which did not meet audit requirements. She filed a handwritten Amended

> First Account on September 2, 1986, and a Second Account on December 10, 1986. The Conservator filed her Third Account on December 1, 1987, and her Fourth Account on November 29, 1988. She filed a Restated Second Account, a Restated Third Account and a Restated Fourth Account on May 25, 1989. She filed a Revised First Account on June 30, 1989, and Restated First, Second, Third and Fourth Accounts on November 28, 1989. New copies of the First,Second, Third and Fourth Accounts were filed January 24, 1990. Ms. Sanford filed her Fifth Account herein on February 8, 1990, her Sixth Account on January 3, 1991, and her Seventh Account on December 10, 1991.

Auditor-Master's Report, p. 7.

As a direct result of the efforts of Petitioner, the Auditor-Master was

appointed to unravel the mismanagement by the Respondent of the Ward's estate. However, it was Respondent that was rewarded at the expense of the Adult Ward for the mismanagement of her affairs. Furthermore, Petitioner was able to demonstrate at the hearing before Judge Sullivan that counsel for Respondent made blatant misrepresentations concerning the approval of the required accounts. However, truth was put to the worst and counsel for Respondent was rewarded for her mendacity with a big fee approval. The dialogue on the record with Judge Sullivan at the proceedings on April 11, 1991, is instructive as to the reason that the Auditor-Master has erred by recommending uncritical payment of the attorney's fee for Respondent:

> The Court: Just a minute. Have you

reviewed the transcript of the proceeding before Judge Wagner.
Mr. Newsome: I have. I have them and I've read them several times.

The Court: All right.

Mr. Newsome: I would also like to say that if you read the pleadings, you will be misled. The pleadings are not on point in a number of respects.

** ** **

Mr. Newsome: An example of what I'm referring to in the pleadings has to do with--one example, if you look at paragraph 5, the opposition to our motion to extend time, filed November 20th, I would just like to read, if I may, paragraph five of that comment:

> The accounts filed by the conservator of the estate have

been approved by the court after close scrutiny by the court auditor. No useful purpose would be served by extending the time to file objections to the report of the deputy auditor master on the first through the fifth accounting.

I think that comment is ripe for ruling or can be today. Another example from the transcript, page 58, line 18, this a comment by counsel:

> Now, as I understand it, all the accounts are in good order and I don't think there's any problem with that.

** ** **

Page two, response to objections to request for fee compensation, an element of what we are controverting:

> All required accounts and other documents have been filed herein by the conservator of the estate and the first five accounts have been approved by the court.

I think that's ripe for your decision and I think that is incorrect. Another, this would appear at page one, response to the conservator of the person's objections to the report of the deputy auditory master filed December 21:

> In point of fact, the conservator of the estate has submitted five accounts which have

been carefully reviewed by court auditors and approved by the court.

As a matter of fact, your Honor, that statement is not correct and as a matter of fact since this case opened there has been consistent filings of accounts, none of which have been acceptable to anybody.

THE COURT: Well, haven't the accounts been approved by judges of this court?

MR. NEWSOME: No.

THE COURT: None of the accounts have been approved?

MR. NEWSOME: No.

THE COURT: Counsel?

MS. ROBINSON: Objection, Your Honor. That simply

isn't the case. They have been approved by the auditor, by the supervisory auditor, and to my understanding, by this Court of the first five accounts.
THE COURT: Which accounts are you referring to? Let's just identify the accounts in question.

MR. NEWSOME: One through five. Six has been filed since we commenced this action.

THE COURT: And you're saying that none of the accounts have been approved?

MR. NEWSOME: That's correct. Court conferred with the deputy clerk, off the record.

THE COURT: Let's do it the easy way. Do you have copies of the approved accounts?

MS. ROBINSON: I wasn't--let me look for them, Your Honor,

if I may. I wasn't anticipating this.

THE COURT: I'm looking at the fourth account apparently that was filed November 29th, 1989. I don't believe that's been approved.

MS. ROBINSON: As a matter of fact, Your Honor, while I cannot lay my hands on that, my recollection is that counsel filed a motion to reopen because he wanted to object to those accounts.

** ** **

THE COURT: I don't think any of these accounts have been approved, Ms. Robinson.

MS. ROBINSON: Your Honor, when I spoke to the supervisory auditor, he told me that they had been approved and I have him here to testify.

THE COURT: Well, I'm just looking at the

> accounts. None of the accounts have the signatures of any of my colleagues.
>
> ** ** **
>
> THE COURT: Well, I see a number of handwritten accounts. Here, I'll restate it: First, second, third, fourth, and et cetera. I don't see any that have been approved by any of my colleagues . . . have not been approved by any judges of this Court, what I'm inclined to do is just refer all these five files back to the Auditor Master and have that person, who has more time than this Court, review the submitted accounts and consider the objections and take whatever action the Auditor Master deems is appropriate.

April 11, 1991, Tr. at 5-11.

However, after the reference was made to the Auditor-Master, the first five

accounts were only reviewed and were never audited. The Auditor-Master stated in her report:

> Accordingly, the Auditor-Master has only reviewed, but not audited, the transactions contained in said accounts . . . and recommends that the court approve the Accounts. . . .

Auditor-Master Report, p. 17.

Yet, the Probate Court indicated at its September 29, 1992, hearing that it would approve the accounts based on the Auditor-Master's recommendation. September 29, 1992, Tr. at 79. On October 26, 1992, the Probate Court signed an Order in fact approving the unaudited accounts over the objections of Petitioner. The Probate Court ruled:

> ORDERED, that the objections filed to the First through

> Fifth Accounts of the Conservator of the Estate are hereby DENIED, and that the First through Fifth Accounts of the Conservator of the Estate, as amended as set forth above, will be approved by this Court. . . .

Court Order dated October 26, 1992, p. 2.

Petitioner vigorously objected to the use of the Ward's money to pay for the misfeasance of the Respondent. However, Petitioner and the best interest of the Adult Ward were ignored in violation of their right to due process. It was not only clearly erroneous but a denial of due process for the Auditor-Master and the Probate Court to find that over $13,000.00 in attorney's fee filed by Respondent was reasonably related to the proper discharge of her duties.

Prior to the Adult Ward's surreptitious move to Washington, D.C. by Respondent, she resided in Virginia with Petitioner and her husband, Jesse Mayes. Virginia was the Adult Ward's place of domicil before the stealthy move of the Adult Ward into the District of Columbia. When Petitioner turned over the tangible personal property of the Adult Ward to the Respondent, the estimated value of the tangible personal property was in excess of $25,000.00. Report of the Auditor-Master, p. 11. However, in the First through Fifth Annual Accounts that were filed, refiled, restated and never audited, the personal property of the Adult Ward was carried at an outrageously low value of $400.00. Id. Petitioner repeatedly and vigorously objected to the carrying value of $400.00. When the Court

appraiser evaluated the tangible personal property that was shown to him by the Respondent, the personal property was valued at a mere $6,206.00. This was not a detailed inventory of the Ward's property. After a third reappraisal was performed on the tangible personal property of the Adult Ward by the Court appraisers, an additional Inventory of Appraised Personal Estate was prepared showing an additional value of $1,245.00. Id. During these repeated so-called reappraisals, Respondent refused to permit the Petitioner to view the Adult Ward's tangible personal property. Id. at 19, ¶ 10. Thus, it was only as a result of the continuing efforts of Petitioner, that the current carrying value of the tangible personal property of the Adult Ward was

raised from $400.00 to $7,345.00. Id. at 18-19.

Nevertheless, the Auditor-Master has recommended that:

> [T]he beginning balance and ending balance of the Conservator of the Estate's First through Fifth Accounts herein be adjusted to reflect a carrying value of the Adult Ward's tangible personal property of $7,345.00 rather than the $400.00 presently contained therein, and that her pending Sixth and Seventh Accounts similarly be amended.

Id. at 18-19. Although it was the position of Petitioner that the Auditor-Master's finding concerning the value of the Adult Ward's tangible personal property was clearly erroneous and arbitrary, Petitioner requested, but was never given an opportunity by the Court to

demonstrate that the Adult Ward's property that was moved to the District of Columbia was a "van load of personal property to be in excess of $25,000.00." Id. at 10-11.

On the basis of the first Guardian Ad Litem's report, Judge Wagner determined that Petitioner should be granted Conservatorship of the Person and that the Ward should live with Petitioner. Report of the Auditor-Master, pp. 8-9. Judge Wagner did not act on the estate part of the conservatorship because the accounts had not been audited. Therefore, contrary to the Auditor-Master's findings, the initial Guardian Ad Litem never indicated that Petitioner was not capable of objectively handling and marshalling the financial resources of the Adult Ward. Moreover, the second Guardian Ad Litem found conservatorship of the Estate with

Petitioner to be in the Ward's best interest. App. 22a. The Auditor-Master's reliance on the initial Guardian Ad Litem's report is misplaced, erroneous and does not reflect the changed circumstances nor the best interest of the Adult Ward. It was clearly erroneous and a denial of due process for the Court to rely upon the outdated and unfounded recommendation of the Auditor-Master not to combine the conservatorship of the Adult Ward in Petitioner.

The sole point the Auditor-Master makes to support not consolidating the conservatorship of the Adult Ward in Petitioner is the transfer of clothing held by Petitioner. Id. at 25. Again, the Auditor-Master is mistaken. The underlying concern of Petitioner has always been proper accounting procedures

and avoiding entanglement in the mismanagement and puzzling dealings of the Respondent. Because there are substantial tangible personal items of the Adult Ward which have not been properly accounted for to the Court, the Petitioner was seeking to avoid any complications which might develop from accepting tangible personal items of the Adult Ward for which there has been no accounting. Although this point was clearly explained to the Auditor-Master, it was not addressed in the Auditor-Master's report. Additionally, there is absolutely no evidence in the Auditor-Master's report to support a refusal to consolidate the conservatorship of the Adult Ward with Petitioner. Therefore, it was arbitrary and clearly erroneous for the Court to adopt the finding of the Auditor-Master

opposing the consolidation of the conservatorship of the Adult Ward with Petitioner. This is especially clear in light of the second Guardian Ad Litem's Report that recommends consolidating the conservatorship with Petitioner as being in the best interests of the Adult Ward.

In addition, it was clearly erroneous for the Auditor-Master to find that the Respondent had not been derelict in her duty to the Adult Ward and the Court. Report of the Auditor-Master, p. 26. The Auditor-Master's own report of the handling of the Conservator of the Estate's responsibility to file accurate accounts with the court compels such a finding of dereliction of duty. The Auditor-Master's report does not reflect a willingness to identify and recommend a course of action that would be in the

Adult Ward's best interest. The Auditor-Master's report clearly demonstrates more concern with the best interest of Respondent than the Adult Ward. The report and recommendations of the Auditor-Master are arbitrary, factually insufficient and should not have been adopted as the findings of the Probate Court. Currently, the Adult Ward cannot speak for herself and cannot articulate her best interest. The Guardian Ad Litem, who was appointed for the express purpose of advising the Probate Court of the Adult Ward's best interest, has indicated that consolidation of the conservatorship in Petitioner is in the best interest of the Adult Ward. The Guardian Ad Litem appeared before the Probate Court and testified in support of consolidating the conservatorship in Petitioner. There was

absolutely no sworn testimony or sworn evidence to the contrary. Petitioner and the Adult Ward are entitled to a fair process since the Probate Court in the District of Columbia is subject to the commands of the Due Process Clause. The Adult Ward has rights which the Probate Court is bound to respect. This was a denial of due process and this case must be reviewed by this Court to correct this injustice.

III. Petitioner and The Adult Ward Were Denied Due Process When The Court Adopted The Defective And Flawed Findings Of The Auditor-Master

In its October 26, 1992, Order, the Probate Court adopted the Auditor-Master's arbitrary findings in their entirety. App. 9a. This was an obvious constitutional violation. The Court below had a constitutional duty not to adopt the

Auditor-Master's arbitrary, clearly erroneous, unsworn and unreliable findings of fact. See, Godette v. Estate of Cox, 592 A.2d 1028, 1032 (D.C. 1991). The Supreme Court must exercise its supervisory authority under the Constitution and review the actions of the court below.

At a hearing before Judge Hamilton on September 29, 1992, Petitioner clearly objected to the Auditor-Master's report because it was based on unsworn evidence. September 29, 1992, Tr. at 44. At the hearing counsel for the Conservator of the Person stated:

> MR. NEWSOME: Ms. Robinson said that we had a very detailed involved hearing before the Auditor Master, which is somewhat inaccurate. We met with her three times for about an hour, hour and a half

> each time. That-- Those hearings were not sworn, they were informally done at a conference table. (emphasis added).

September 29, 1992, Tr. at 44.

In addition, the Report of the Auditor-Master was filed with the Court without a transcript of the proceedings, evidence or the original exhibits in violation of Rule 53(e)(1) of the Superior Court Civil Rules which provides in part that:

> The master shall file the report with the Clerk of the Court and in an action to be tried without a jury . . . shall file with it a transcript of the proceedings and of the evidence and the original exhibits.

Rule 53(e)(1), Sup. Ct. Civ. R.

Although Petitioner called the Court's attention to the fact that

evidence of the Auditor-Master's findings were not sworn and unreliable, the Court rejected Petitioner's objections and adopted the Auditor-Master's findings without allowing Petitioner to offer contrary evidence on the record during the September 29, 1992, hearing:

> THE COURT: Well, the Auditor Master finds that the Conservator of the property is chargeable with seven thousand three-hundred forty-five dollars worth of property received from the committee, as I understand it, who was appointed down in Chesterfield County, Virginia.
>
> MR. NEWSOME: That's right.
>
> THE COURT: And that's the figure that the Court accepts and adopts and which should be incorporated in defending accounts in this case.

> MR. NEWSOME: We object to that, Your Honor.
>
> THE COURT: All right. So the objection is noted for the record.

September 29, 1992, Tr. at 46.

It was clearly erroneous for the Court to adopt the findings of the Auditor-Master which were based on unsworn evidence. D.C. Code 14-101(a) and (b) provides that evidence from a witness must be under oath or affirmation. Accord, Fed. R. Evid. 603. This is the minimal judicial requirement of other states in our country. See, e.g., Minn. Rule of Evidence 603; Delaware Rule of Evidence 603; Utah Rule of Evidence 603; Arizona Rule of Evidence 603; Idaho Rule of Evidence 603; Texas Rule of Crim. Evid.; Iowa Rule of Evidence 603; New Hampshire Rule of Evidence 603; Wyoming Rule of

Evidence 603; Ohio Rule of Evidence 603. D.C. Code 14-101(a) provides that, "(a) All evidence shall be given under oath according to the forms of the common law." As indicated by Rule 53, Sup. Ct. Civ. R., the Auditor-Master may "put witnesses on oath and may examine them and may call the parties to the action and examine them upon oath." It was clearly erroneous and a denial of due process for the Court to have accepted and adopted the findings of the Auditor-Master that were based on unsworn evidence. See, In re Sippy, 97 A.2d 455 (D.C. 1953) and In The Matter of Williams, 464 A.2d 115 (D.C. 1983). It was also an unconstitutional application of Rule 53, Sup. Ct. Civ. R., for the D.C. Court of Appeals to have interpreted Rule 53 as making an oath permissible rather than mandatory upon the Auditor-Master.

This application of Rule 53 is inconsistent with D.C. Code 14-101(a).

Petitioner maintains that it was a further denial of due process for the Auditor-Master not to have appeared at the September 29, 1992, hearing to defend or to vouch for her report. Petitioner had no opportunity to cross-examine or confront the Auditor-Master under oath or on the record concerning her report. Although Petitioner filed objections to the Auditor-Master's report and was prepared to present witnesses and evidence under oath to refute the accuracy of the Auditor-Master's findings in her report, the Court did not permit Petitioner to develop the record or to have her witnesses heard at the so-called hearing. See, September 29, 1992, Tr. at 42-47. This was not only a denial of due process

but it was a denial of a judicial process to Petitioner and should not go unremedied.

IV. The Judicial Process In The District Of Columbia Has Failed The Adult Ward And This Court Should Order The Probate Court Of the District Of Columbia To Relinquish Its Jurisdiction Over The Conservatorship To The Commonwealth Of Virginia

It is well settled that the factors upon which the credibility of a witness testimony depends are the perception, memory, and narration of the witness. McCormick on Evidence, p. 581 (2nd Ed. 1972). In order to have witnesses at trial put forth their best efforts and to expose inaccuracies which might be present with respect to the perception, memory and narration of witnesses, our jurisprudence have developed three conditions under which witnesses ordinarily will be

required to testify, i.e., under oath or affirmation, based on personal presence at trial and subject to cross-examination. Id. Petitioner and the Adult Ward were denied all of the above expected prophylactic judicial measures in the Probate Court below. Accordingly, Petitioner and the Adult Ward have been denied a fair hearing and due process of law.

The District of Columbia Court of Appeals has failed to correct this violation of the constitutional rights of residents of a different state and this Court's intervention is necessary to prevent a miscarriage of justice. The Adult Ward is currently a bedridden 87 year-old resident of the Commonwealth of Virginia. All of the Adult Ward's medical needs are met in the Commonwealth of

Virginia. The Conservator of the Person (Petitioner) is a resident of the Commonwealth of Virginia and all personal decisions concerning the person of the Adult Ward are made in the Commonwealth of Virginia. The only contact that the Adult Ward has with the District of Columbia is related to this litigation and the control that Respondent wrongfully exercises over her finances. This control over the Adult Ward's finances has been abused and the property of the Adult Ward has been mismanaged and not properly accounted for. The Probate Court and the Court of Appeals in the District of Columbia are refusing to correct this extraordinary situation and are failing to do justice for the invalid Adult Ward. In fact, the District of Columbia judicial procedures and processes have failed to demand the

minimal accountability that the law and the constitution require for the affairs of an invalid or Adult Ward who is not able to assert her own legal rights for the proper management of her property and affairs. There is a travesty of justice taking place in this case while it is pending before the Probate Court in the District of Columbia. The Probate Court's lack of fair procedures and attention to the proper affairs of the Adult Ward stems in part from its attenuated contacts with the person of the Adult Ward who lives in the Commonwealth of Virginia and its tolerance for the misfeasance and malfeasance of Respondent in handling the Adult Ward's finances and property.

Moreover, Respondent, who lives in the District of Columbia, has made only two unannounced visits to the Adult Ward

in Virginia in four years and has no intention of caring for the person of the Adult Ward in her home. In fact, Respondent has expressly indicated that the Commonwealth of Virginia is the best place for the Adult Ward and that if she had complete control of the conservatorship she would commit the Adult Ward to a nursing home in Virginia.

While the Probate Court of the District of Columbia exercised jurisdiction over the Adult Ward in 1984 when it last addressed the challenge to its jurisdiction, clearly the circumstances concerning the Adult Ward's residency and contact with the District of Columbia have changed to such a degree that one must strain to justify the continued exercise of jurisdiction by the D.C. Courts in the circumstances of this

case. Surely, one is hard pressed to understand why the D.C. Probate Court is continuing to exercise jurisdiction over the person and property of someone who is no longer in the District of Columbia and has no intention of returning or being returned to the District of Columbia and is too frail to even travel to or appear in court in the District of Columbia. The Adult Ward has constructive and actual domicil and citizenship in the Commonwealth of Virginia that must be respected by the courts of the District of Columbia. The Adult Ward's best interest would be served by the attention that a local probate court in Virginia would bring to bear on its own residents and citizens.

The continued exercise of jurisdiction in this case by the Probate

Court of the District of Columbia under the circumstances of this case is offensive to basic principles of fairness and due process of law. Clearly, "authority under the D.C. Code cannot itself give the conservator the power to assert control over property in other jurisdictions." See, Mitchell v. Ensor, 134 U.S. App. D.C. 24, 30, 412 F.2d 155, 161 (1969). In fact, this Court has stated that:

> [A] guardian appointed by the courts of one State has no authority over the ward's person or property in another State, except so far as allowed by comity of that State. . . .

Lamar v. Micou, 112 U.S. 452, 470 (1884). Accord, Hoyt v. Sprague, 103 U.S. 613, 631 (1880).

The dispute in this case is not simply a local issue; it is an extraordinary, interstate dispute involving residents (Petitioner and the Adult Ward) of the Commonwealth of Virginia and the Probate Court of the District of Columbia. In Klapprott v. United States, 335 U.S. 601, 611 (1949), this Court recognized that "it is the final responsibility of this Court to formulate the controlling rules for hearings and proof." Further, this "Court has long recognized the plain fact that to deprive a person of his American citizenship is an extraordinarily severe penalty." Klapprott, 335 U.S. at 612. Here, residents and citizens of the Commonwealth of Virginia have been denied their constitutional rights to due process of law in the courts of the District of

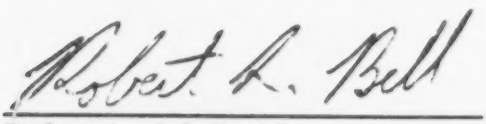
Columbia. The continued exercise of jurisdiction by the Probate Court of the District of Columbia is tantamount to depriving the Adult Ward of the benefit of her residency and citizenship in the Commonwealth of Virginia. The consequences of such a deprivation have fallen heavily upon Petitioner and the Adult Ward. For example, Petitioner has been paying substantial portions of the expenses to maintain the Adult Ward from Petitioner's own savings. This is because Respondent has arbitrarily refused to pay much of the Adult Ward's maintenance expenses from the assets of the Adult Ward. This unfair situation is wrongfully depriving both Petitioner and the Adult Ward of property and all that makes life worth living together.

Because of the Probate Court's continued exercise of jurisdiction over the Adult Ward, under the circumstances of this case, Petitioner and the Adult Ward are deprived of the benefits of their residency and citizenship in the Commonwealth of Virginia. This Court's intervention is necessary to correct this extraordinary interstate dispute.

CONCLUSION

For these reasons, a writ of certiorari should be issued to review the judgment and opinion of the District of Columbia Court of Appeals and the Probate Court of the District of Columbia.

Respectfully submitted,



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APPENDIX

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 92-1436

VIRDELL R. MAYES, APPELLANT

v.

MILDRED R. SANFORD, APPELLEE

Appeal from the superior Court of the District of Columbia

(Hon. Eugene N. Hamilton, Trial Judge)

(Argued 4/13/94 Decided 5/5/94)

Before FERREN, Acting Chief Judge, and TERRY and STEADMAN ASSOCIATE JUDGES.

MEMORANDUM OPINION AND JUDGMENT

This appeal is the latest chapter in a long and hard fought dispute between two sisters over the care of a third sister, Irene Davis, who has been incapacitated by Alzheimer's disease. Appellant Virdell Mayes is the court appointed conservator of Mrs. Davis' person, but appellee Mildred Sanford is the court-appointed

conservator of Mrs. Davis' estate. Initially Mrs. Sanford served in both capacities, but in 1990, on Mrs. Mayes' motion, the trial court removed Mrs. Sanford as conservator of the person and appointed Mrs. Mayes in her stead, leaving Mrs. Sanford solely as conservator of the estate. This new arrangement proved to be less than ideal because the two sisters, Mrs. Mayes and Mrs. Sanford, did not get along with each other.[1]

Near-constant sniping about finances led the court to appoint an auditor-master in 1991 to look into the dispute and propose a solution. The auditor's report, filed in March 1992, concluded that the best interests of the ward (Mrs. Davis), and accordingly recommended that the court

---

[1]It also appears from the record that there is some friction between Mrs. Mayes' husband and Mrs. Sanford.

remove both conservators and appoint a third party to serve as conservator of both the person and the estate of Mrs. Davis. The court, however, elected to hold a hearing on the matter before making a decision. After considering both the auditor's report and the testimony of a guardian *ad litem* (who recommended that Mrs. Mayes alone be made conservator of both the person and the estate), the court entered an order maintaining the divided conservatorship. From that order Mrs. Mayes brings this appeal. We affirm.

Appellant's principal argument is that the trial court erred in rejecting her petition to remove Mrs. Sanford as conservator of Mrs. Davis' estate and deciding instead to continue the status quo. She claims error because the trial court's ruling was at odds with the

recommendation of the guardian *ad litem*. The short answer to this argument is that the guardian's recommendation was not binding on the court. On the contrary, the current law, D.C. Code § 21-2033 (a) (1988), makes clear that the guardian "shall not serve as an independent finder of fact, investigator, ombudsman, or other neutral party in the proceeding." The duty of deciding what arrangement is in the best interests of the ward remains with the court at all times.

The record plainly demonstrates that the trial judge in this case performed that duty after carefully weighing all the facts--including the fact that the auditor-master and the guardian *ad litem* had come to different conclusions about the proper solution to the controversy. The guardian recommended that Mrs. Mayes

be appointed conservator of the estate as well as the person of Mrs. Davis, but the auditor recommended that both sisters be removed and a neutral third party be appointed as the sole conservator. One factor which weighted heavily in the judge's decision was the prospect that Mrs. Davis' modest estate, already burdened with the cost of medical care, would be severely depleted by the appointment of a non-family conservator, who would have to be paid. Such a step, the judge said, was "an extreme alternative." It is clear that the current state of affairs is unsatisfactory to all concerned. It is also clear, however, that the judge decided to give the parties one more chance to make an effort to work together in the interests of their invalid sister, before taking the

costly and extreme step of replacing both conservators with an outsider. We find no error in his decision.[2]

Appellant also challenges the report of the auditor-master. At the hearing below, there was extensive discussion about the auditor's report, with the court and counsel going over it almost line by line. The trial judge was satisfied that the auditor's report was fully supported by the facts, and we can find no basis to disagree. See Super. Ct. Civ. R. 53 (e) (2) (Court "shall accept" master's findings of fact "unless clearly

---

[2] Appellant complains that "there is a complete want of findings or a record to explain the court's failure to determine the best interests of the adult ward." We strongly disagree. Even though the trial judge did not make specific factual findings, the reasons underlying his decision are quite clear from the record. We reject appellant's request to remand the case for more specific findings.

erroneous"). Appellant objects to the fact that the auditor did not take sworn testimony, but the objection is not well taken. Super. Ct. Civ. R. 53 (c) states that the auditor-master "may" examine witnesses under oath, but she is not required to do so. In this case, because it appears that appellant's counsel failed to object to the prccedure followed by the auditor when the auditor procedure followed by the auditor when the auditor proposed it, and because appellant made no complaint about it in the trial court,[3]

[3] At one point during the hearing below, appellant's counsel mentioned that the hearings before the auditor "were not sworn, they were informally done at a conference table." This comment was made, however, in the context of a general challenge to the auditor's findings. We do not read it as a specific complaint about the auditor's findings. We do not read it as a specific complaint about the auditor's failure to take testimony under oath.

her present complaint about that procedure will not be heard. *See Byrd v. United States,* 502 A.2d 451, 453 (D.C. 1985), citing *Hackes v. Hackes,* 446 A.2d 396, 398 (D.C. 1982).

Finally, appellant contends that because Mrs. Davis has moved from the District of Columbia to Virginia, the conservatorship proceedings in this case should be transferred from the District of Columbia courts to the Virginia courts. She asserts that the only remaining contact with the District is the fact that Mrs. Sanford lives here. This is plainly wrong. Aside from the fact that Mrs. Davis, now disabled by illness, almost certainly lacks the requisite intent to change her domicile (and almost certainly lacked it at the time she moved), appellant's argument ignores the fact that

Mrs. Davis' assets remain in the District of Columbia. That fact alone provides sufficient basis for keeping the case here.

The order from which this appeal is taken is therefore

Affirmed.

FOR THE COURT:

/s/
William H. Ng
Clerk

Copies to:

Honorable Eugene N. Hamilton

Clerk, Superior Court

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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

PROBATE DIVISION

In Re:	)	
	)	
IRENE R. DAVIS	)	Fiduciary No. 209-84
	)	
Adult Ward	)	

ORDER

The Court having considered the Report of the Auditor-Master issued pursuant to the Court's Orders of Reference of June 18, 1991, November 21, 1991, and December 19, 1991, and having considered the Objections filed thereto, and having considered the various pleadings filed by the Parties in the above-referenced matter, and having reviewed the record, and for good cause show, it is by the Court this 26th day of October, 1992

ORDERED, that the findings of the Auditor Master, as set forth on pages one through twenty-six of her Report, are hereby adopted as findings of this Court; and it is further

ORDERED, that the Conservator of the Estate shall amend her First through Seventh Accounts to show the adjusted value of the tangible personal property of the ward to be $7,345.00; and it is further

ORDERED, that the Objections filed to the First through Fifth Accounts of the Conservator of the Estate are hereby DENIED, and that the First through Fifth Accounts of the conservator of the Estate, as amended as set forth above, will be approved by this Court; and it is further

ORDERED, that the Objections filed to the Fee Petitions of the attorney for the

Conservator of the Estate are hereby DENIED, and that the Conservator of the Estate shall pay attorney's fees in the amount of $13,800 and costs in the amount of $403.87 from the estate of the Adult Ward to Sara M. Robinson, Esq., attorney for the Conservator of the Estate; and it is further

ORDERED, that the Petition for Removal of the Conservator of the Estate is hereby DENIED, and it is further

ORDERED, that the Findings of the Auditor-Master, as contained in her report of March 31, 1992, are hereby ratified and approved; and it is further

ORDERED, that the Register of Wills and Clerk of the Probate Division are authorized and directed to return to the Parties documentary material submitted with regard to the preparation of the

account stated in the Report of the Auditor-Master; and it is further

ORDERED, that the Conservator of the Estate, having denied any request by the Conservator of the Person for reimbursement or for authority to expend, shall within ten (10) days submit such request and the reason for her denial to the court for its ruling pursuant to a petition, and it is further

ORDERED, that the Court authorizes the Conservator of the Estate to pay the sum of $300.00 to the Auditor-Master for executing the Orders of Reference entered June 18, 1991, November 21, 1991, and December 19, 1991; and it is further

ORDERED, that both the Conservator of the Person and the Conservator of the Estate shall continue to serve in their

respective positions in this matter until further Order of this Court.

/s/ E. Hamilton
JUDGE

cc to:

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Ms. Dorothy Welburn
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Ms. Zelma Buffin
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Copies mail, postage prepaid, to parties indicated above on OCT 26 1992 RD

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

PROBATE DIVISION

In Re:)

IRENE R. DAVIS) Fiduciary No. 209-84

REPORT OF GUARDIAN AD LITEM

COMES NOW, Ana I. Fabregas, Guardian Ad Litem for Irene Davis, and pursuant to D.C. Code §21-2033(c) submits the following report to the Court.

1. On July 29, 1992, this Court entered an order appointing undersigned as the *Guardian Ad Litem* for Irene Davis. The *Guardian Ad Litem* was appointed for the purpose of representing the best interests of the Ward "in terms of the most appropriate arrangement so far as who should be appointed Conservators ...." [Transcript of the Hearing of July 17, 1992, page 19].

2. Currently, the Conservatorship is divided between Mrs. Mildred Sanford and Mrs. Virdell Mayes, who are both sisters of the Ward. Mrs. Sanford is the Conservator of the Estate and, accordingly, is in charge of the assets, while Mrs. Mayes is the Conservator of the person. Irene Davis currently resides with Mrs. Mayes and her husband in Ettrick, Virginia. The transcripts of the hearings, as well as the numerous documents filed in this case reveal that both Conservators disagree as to how Irene Davis' financial affairs should be handled and what type of care should be given to her.

3. In order to determine the best interests of the Ward, the Guardian Ad Litem personally met with Mrs. Sanford and her attorney, Sara Robinson, on September

9, 1992, at which time Mrs. Sanford was given an opportunity to express her concerns about the matter. Mrs. Sanford's concern is twofold. First, she questions Mrs. Mayes' ability to care for the Ward, given Mrs. Mayes' age and the Ward's mental and physical condition. In this regard, Mrs. Sanford believes that it is in the best interest of the Ward to transfer her to a nursing home facility that provide comprehensive care for the elderly, including care for patients with Alzheimer's Disease. Secondly, Mrs. Sanford questions the propriety of some of the expenditures incurred by Mrs. Mayes in the care of Irene Davis. In particular, Mrs. Sanford is critical of Mrs. Mayes' expenditures for the rental of a photocopy machine, as well as those charges allocated by Mrs. Mayes for the Ward's

share of the food bills and the electric bill.

4. To better investigate Mrs. Sanford's concern, the Guardian Ad Litem personally visited Irene Davis, Mrs. Mayes and her husband on September 17, 1992. The Guardian Ad Litem had the opportunity to spend the afternoon with the Ward and evaluate her condition. Although initially, the Guardian Ad Litem was skeptical of Mrs. Mayes' ability to care for the Ward, any doubt had dissipated by the conclusion of the visit.

5. The Ward is an elderly lady who suffers of what appears to be an advanced state of Alzheimer's Disease. Irene Davis is unable to take care of her most basic needs on her own. Although she is capable of chewing and swallowing food, she must be fed and the process takes approximately

1 hour. Irene Davis is unable to utter words and it is questionable whether she can understand any words, but she responds well to touch and affection. Notwithstanding her condition of Alzheimer's Disease, the Ward looked healthy.

6. The Ward's accommodations consist of a bedroom with a window that faces the backyard. The bedroom is located directly across from Mrs. Mayes' bedroom. The Ward's room is equipped with a bed that can be set in different positions with a manual lever. To facilitate her breathing, she has a vaporizer. She also has her own supply of linens, several robes and dresses, and shoes. The general condition of the room was clean and tidy.

7. Mrs. Yeates, an assistant nurse with over fifteen years of experience, is

in charge of the Ward during the morning hours and early afternoon, five days per week. Mrs. Yeates is very fond of the Ward and has developed a good rapport with her. Mrs. Mayes cooks all the meals for the Ward and provides care the remainder of the day and night. Mr. Mayes assists in relocating the Ward from the bedroom to other parts of the house.

8. Mr. and Mrs. Mayes are two responsible, health, and caring individuals. They have great devotion and affections for Irene Davis and are doing a superb job in offering the Ward a clean, healthy, loving environment. They have advanced their own funds in order to provide for the Ward. Except for an electric hospital bed and a chair with an electric lift, the Ward does not lack in comfort.

9. The *Guardian Ad Litem* believes that Mrs. Mayes should continue providing the necessary care to the Ward. In order to assist her in that regard, she should be permitted to spend additional funds of the Estate so that she can hire another health care professional to care for the Ward during the afternoon and early evening hours. She should also be permitted to purchase an electric hospital bed[1] and achair with an electric lift, as the Ward enjoys watching television during the evening.

10. It is impossible to predict the life term of Irene Davis, and as such there is no guarantee that the Mayes will

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[1]Currently the Ward has a manual hospital bed. Mrs. Mayes complains that the lever is hard and difficult to operate. The Guardian Ad Litem corroborated that the lever presents some difficulty.

be strong and healthy for the duration of Irene Davis' life. The *Guardian Ad Litem* believes that should the Mayes' health decline to the point that they would be unable to provide adequate care, the Ward should be transferred to a nursing home facility. However, the Mayes are currently strong and healthy and they should be permitted to care for the Ward for as long as they are willing and able.

11. With respect to the financial affairs of the Estate, the record reflects that the Ward has an income of approximately $1400.00 per month. The Estate's bank accounts contain an aggregate amount of approximately $65,000.00. The record of expenditures during the past 18 months (February 1991 through July 1992) shows that the Ward spends an average of $980.00 per month.

The Guardian Ad Litem believes that this amount as a whole is reasonable notwithstanding the rental of the photocopy machine. The *Guardian Ad Litem* further believes that, given the Estate's monthly income and resources, the Estate can afford to spend an additional $500.00 per month in the employment of another health care professional, as well as purchase the bed and the chair.

12. The conflict between the two Conservators is, no doubt, irreconcilable. However, there should be no doubt that both Conservators genuinely want to do the best for the Ward. The majority of the financial disagreements appear to be a matter of discretion. The *Guardian Ad Litem* believes that, although Mrs. Sanford can do an adequate job with the finances, Mrs. Sanford lacks the day to day contact

with the Ward to make the necessary decisions regarding expenditures. In that regard, Mrs. Mayes is in a superior position to make financial decisions and handle the Estate. The *Guardian Ad Litem* believes that the separation of the Conservatorship is impractical, given the unfounded level of mistrust between the two Conservators. For that reason the Guardian Ad Litem believes to be in the best interest of the Ward to place the office of the Conservatorship of the Estate with Mrs. Mayes.

CONCLUSION

The Ward is an elderly lady suffering of a condition commonly known as Alzheimer's Disease, which prevents her from taking care of her own basic needs. The Ward requires constant attention and care. Mrs. Mayes is able to provide

adequate care to the Ward as well as a loving environment. For that reason, the *Guardian Ad Litem* believes that Mrs. Mayes should remain as Conservator of the Ward.

The current arrangement in which one Conservator handles the Estate and another Conservator provides for the Ward is impractical. Although there should be no question of Mrs. Sanford's good intentions, Mrs. Sanford lacks the day to day contact with the Ward to make decisions concerning expenditures. Accordingly, the Guardian Ad Litem believes that Mrs. Mayes should hold the office of Conservator of the Estate.

Respectfully submitted,

/s/
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Tel: (301) 970-2270
Guardian Ad Litem for
Irene Davis

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

PROBATE DIVISION

In Re:	)	
	)	
IRENE R. DAVIS	)	Fiduciary No. 209-84
	)	
Adult Ward	)	

ORDER

This matter was before the Court on July 17, 1992. It is this 29th day of July, 1992 hereby

ORDERED, that an evidentiary hearing is scheduled for September 29, 1992 at 11:00 a.m. before Judge E. Hamilton in Courtroom 321. Given the present conflict that exist between the fiduciaries, it is hereby,

FURTHER ORDERED, that /s/ Ana I. Fabregas, Esq. is appointed guardian ad litem in this matter to represent the interests of the subject.

SO ORDERED.

/s/
Eugene N. Hamilton
Judge

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